

1 STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
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3 STATE OF WISCONSIN,
4 Plaintiff,
5 Case No. 2016-CF-000762
6 vs.
7 MARVIN L. CARTER,
8 Defendant.

9
10 TRANSCRIPT OF PROCEEDINGS
11
12 Proceedings: Motion Hearing
13 Date: August 9, 2016
14 Before: THE HONORABLE TIMOTHY WITKOWIAK
15 Branch 22

16 APPEARANCES:
17 For the Plaintiff: LAURA A. CRIVELLO
Assistant District Attorney
18 For the Defendant, MARK SCHOENFELDT
19 who appeared in person: Attorney at Law
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1 P R O C E E D I N G S

2 THE CLERK: State of Wisconsin versus
3 Marvin Carter. 16-CF-762. Appearances.

4 MS. CRIVELLO: Laura Crivello appearing on
5 behalf of the State.

6 MR. SCHOENFELDT: Good afternoon, Your
7 Honor. Attorney Mark Schoenfeldt on behalf of Marvin
8 Carter, who appears in person.

9 THE COURT: All right. My understanding
10 is the matter is set for motion hearing today. Are
11 both sides prepared to proceed?

12 MS. CRIVELLO: Yes, Your Honor.

13 MR. SCHOENFELDT: Yes.

14 THE COURT: The State's first witness.

15 MS. CRIVELLO: Your Honor, I think it
16 makes more sense that the defendant start the second
17 prong of his argument. The second prong is alleging
18 that the affidavit underlying the search warrant does
19 not contain probable cause.

20 Relative to that matter, it doesn't
21 require any testimony to be heard. It's just a basic
22 reading of the warrant and a determination as to
23 whether or not The Court finds that there was probable
24 cause underlying the search warrant. Is that correct,
25 defense counsel?

1 MR. SCHOENFELDT: I guess that would make
2 sense, yes.

3 THE COURT: Does anybody have the
4 affidavit?

5 MR. SCHOENFELDT: I do.

6 THE COURT: Thank you. So we've got five
7 controlled buys alleged. There's indication within
8 the last 72 hours the confidential informant did make
9 a purchase at the address. The officers observed the
10 purchase. The officers did a test and found it be to
11 be heroin or found it be to be opiates, I should say.

12 So, Counsel, why do you think this does
13 not give you sufficient information to -- for the
14 issuance of a warrant?

15 MR. SCHOENFELDT: Well, Your Honor, it's
16 contained pretty much in my brief. I've summarized
17 what my argument is in this case. If I just look at
18 the State's brief actually in this case, we can see
19 that there are some issues or elements missing in the
20 probable cause portion -- probable cause portion of
21 the affidavit.

22 I'm turning to the State's brief. First
23 of all, the case law that makes up probable cause, and
24 that would be on page six of eight -- whether a search
25 warrant is supported by probable cause is determined

1 by the totality of the circumstances.

2 Okay. This requires a probable cause,
3 common sense test, and person supplying hearsay
4 information that there be a fair probability that
5 contraband or evidence of a crime will be found in a
6 particular place.

7 So we're looking at the totality of the
8 circumstances. We turn to page seven of the State's
9 brief and we have the --

10 THE COURT: Let's look at the affidavit.
11 The officers set up a buy at this residence 72 hours
12 before, observed the -- searched the confidential
13 informant. There's no drugs, and then get the --

14 MR. SCHOENFELDT: Stop there, Your Honor.
15 I'm sorry, I don't want to interrupt.

16 THE COURT: Go ahead.

17 MR. SCHOENFELDT: I don't want to
18 interrupt you, but that's the crux of the problem
19 here.

20 THE COURT: I see. So there was no
21 indication of a search?

22 MR. SCHOENFELDT: We're looking at the
23 totality of the circumstances. Number one is fine.
24 Number two, that within the preceding 72 hours of
25 obtaining the search warrant, the informant was

1 searched for contraband. So what.

2 He was searched 72 hours before obtaining
3 this search warrant. The affidavit here that was
4 drawn up by Detective Kuspa, it is very particular
5 when the quote/unquote controlled buy was finished,
6 because he states in his affidavit that the
7 confidential informant was in fact searched after the
8 controlled buy.

9 Nowhere in this affidavit does it state
10 that this confidential informant was searched
11 immediately, and the important word here to remember
12 is immediately before this quote/unquote controlled
13 buy took place.

14 The controlled buy is -- it's warrant 101.
15 In order to obtain a warrant in a case like this, you
16 have to have a controlled buy. A controlled buy is
17 really a three-step process.

18 There's a search of the confidential
19 informant, there's the buy, and then there's the
20 search of the confidential informant. Nowhere in the
21 affidavit, and it's nowhere in the State's brief, and
22 it doesn't mention it really, it says that we've
23 argued something else, which it's way off on another
24 tangent.

25 We're not even arguing that. We're

1 arguing the fact that based on the affidavit that was
2 presented to the magistrate in this case, the court
3 commissioner, the court commissioner could not
4 possibly have found probable cause, because if we're
5 going to follow through with a controlled buy, let's
6 do it right.

7 We don't have the date, we don't have the
8 time, we don't have the fact that this confidential
9 informant was searched before he went in to do this
10 buy. It's a buy, and he might have brought back
11 heroin, but we don't know that this confidential
12 informant had that in his pocket before he executed
13 his controlled buy.

14 THE COURT: Counsel --

15 MR. SCHOENFELDT: Based on --

16 THE COURT: -- paragraph 13 indicates the
17 search, paragraph 14 indicates the buy. It follows.
18 If it was disjunctive, I would agree with you, then
19 perhaps we'd have a problem, but it appears to me that
20 it follows that the buy occurred right after the
21 search.

22 MS. CRIVELLO: I would also reference that
23 there's this great paragraph in paragraph five, that
24 defines exactly what a controlled buy is. It's a term
25 which refers to a situation in which a confidential

1 informant works with law enforcement officers
2 regarding the purchase of a controlled substance.

3 This paragraph goes on to indicate what a
4 controlled buy is, and it says, the affiant searches
5 the person in clothing of the informant to make sure
6 the informant has no controlled substance or moneys on
7 his person. The affiant then gives the informant
8 money and watches the informant proceed to the
9 targeted location.

10 The affiant then watches the informant
11 depart from the targeted location a short time later
12 and return to the affiant. The informant gives
13 affiant the controlled substance, which the informant
14 has purchased at the targeted location, which is
15 exactly what is set forth in the paragraphs that are
16 in order starting at paragraph 13 going on to 14,
17 going on to 15, and ultimately resulting in the
18 testing that's reflected in paragraph 16.

19 MR. SCHOENFELDT: That's simply not true.
20 He was not -- it does not state in the affidavit that
21 he was searched prior to this buy taking place.

22 MS. CRIVELLO: It reflects the
23 defendant -- the confidential informant was subjected
24 to a search, that this search occurred 72 hours; that
25 following that he was given a hundred dollars in

1 prerecorded U.S. currency. That the affiant did
2 follow the confidential informant to the targeted
3 premises.

4 THE COURT: Counsel, I don't need a third
5 and second timeline for the officers. This clearly
6 indicates this is one transaction. If it appeared
7 again disjunctive, then I wouldn't disagree with you
8 necessarily, but here it flows, it's exactly step by
9 step what occurred.

10 I mean, if there were any indication that
11 there was a separate timeline, then perhaps I would
12 agree with you, that it's disjunctive, but here it
13 shows that there was a search done. Then the very
14 next paragraph indicates they followed him to this
15 address, they arrived at the address, and the buy was
16 made. So I don't --

17 MR. SCHOENFELDT: Without any time
18 reference whatsoever in this affidavit. When this buy
19 took place, what time of day this -- without any
20 particularity of what time it took place, just
21 simply -- that he was searched 72 hours before a buy
22 took place.

23 MS. CRIVELLO: Actually it doesn't say
24 that. It says it was 72 hours before the warrant was
25 obtained. So within the 72 hours --

1 THE COURT: Right.

2 MR. SCHOENFELDT: Before the warrant was
3 obtained, yes.

4 THE COURT: The Court's going to deny that
5 portion of the defense motion.

6 MS. CRIVELLO: Thank you. Turning to the
7 next portion, if defense counsel seeks to go forward
8 -- I'll call my witness.

9 MR. SCHOENFELDT: Let me have a minute.

10 THE COURT: Sure. Why don't you hit the
11 microphone, Counsel.

12 (Discussion off the record.)

13 MS. CRIVELLO: The State would call
14 Detective John Kuspa.

15 THE CLERK: Please raise your right hand.

16 (JOHN KUSPA, WITNESS, DULY SWORN.)

17 THE CLERK: Please state your name and
18 spell it for the record.

19 THE WITNESS: Detective John, J-O-H-N,
20 last name is Kuspa, K-U-S-P, as in Paul, A.

21 MS. CRIVELLO: May I proceed?

22 THE COURT: Sure.

23 DIRECT EXAMINATION

24 BY MS. CRIVELLO:

25 Q Thank you. Detective Kuspa, by whom are you employed?

1 A I'm a detective with the Milwaukee Police Department.

2 Q How long have you been a detective?

3 A 11 and-a-half years.

4 Q How long have you been a police officer?

5 A 25.

6 Q Where are you presently assigned?

7 A Working out of the High Intensity Drug Trafficking

8 Area assigned to the Milwaukee Metropolitan Drug

9 Enforcement Group.

10 Q How long have you been so assigned?

11 A I've been at HIDTA since 2010.

12 Q And what are the basic nature of your duties?

13 A Narcotics investigations within the county of

14 Milwaukee.

15 Q And on -- in November of 2016 were you so involved?

16 A Yes.

17 Q And in fact, based on information that you had gained,

18 were you the affiant for a search warrant?

19 A Yes.

20 Q And was that search warrant for [REDACTED]

21 [REDACTED] ?

22 A Correct.

23 Q And that's in the city and county of Milwaukee, state

24 of Wisconsin?

25 A Yes.

1 Q And who was the target of that warrant?

2 A Mr. Marvin Carter.

3 Q Do you see him present in court?

4 A I do.

5 Q Please identify him by where he's seated and what he's

6 wearing.

7 A He's the African-American male wearing a pink jumpsuit

8 sitting at the defense table.

9 MS. CRIVELLO: May the record reflect that

10 Detective Kuspa identified the defendant.

11 THE COURT: The record will so reflect.

12 MS. CRIVELLO: Thank you.

13 Q And on February 12th of 2016 were you present at [REDACTED]

14 [REDACTED] ?

15 A Correct.

16 Q And you were the lead officer of this investigation;

17 is that correct?

18 A Correct.

19 Q But on top of that, you were the team leader of the

20 entry team; is that correct?

21 A Correct.

22 Q What training do you have to be a team leader?

23 A We do executions of search warrants. We have a group

24 of individuals that are trained. It's not a swat team

25 but we've gone through formal training. We have the

1 equipment to execute the warrants.

2 My job as team leader is basically to

3 coordinate the team that will actually be executing

4 the search warrant.

5 Q What does that mean to coordinate the team?

6 A Arrange the members that will be present to actually

7 execute the warrant on a given day.

8 Q And do you actually do the briefing about where you're

9 making entry, how to make entry, who's going to be the

10 lead person making entry?

11 A Correct. That's usually the day of the warrant. It

12 also involves doing a recognizance on a particular

13 residence to determine best safe route to the

14 residence, the approach to the residence, and actually

15 the actual briefing and designating assignments to

16 each member involved.

17 Q And how many years have you been a team leader of this

18 entry team?

19 A Probably the last four.

20 Q Okay. So on this date you arrive at this targeted

21 location with the entry team; is that correct?

22 A On the day of the warrant --

23 Q Correct.

24 A -- service, yes.

25 Q And about how many people are comprised of this unit?

1 A It was an eight-member entry team followed by several
2 members used as containment around the house.

3 Q And for the eight-member entry team, is that standard?

4 A Yes. We try to use generally at least eight people,
5 depending on the size of the residences, if we're
6 going to incorporate an attic or a basement, potential
7 two-story we try to get maybe ten. It all depends on
8 the different factors gathered on recognizance prior
9 to the warrant.

10 Q Okay. In this particular case you were the affiant
11 underlying the search warrant, correct?

12 A Correct.

13 Q And on this warrant you did not seek authorization to
14 do -- to enter this premises in a no-knock fashion,
15 did you?

16 A Correct.

17 Q So this was a knock-and-announced warrant?

18 A It was a knock-and-announced warrant.

19 Q And what does that mean?

20 A That basically the officers that are going to execute
21 the warrant have to go up to the residence, knock,
22 announce their presence, and allow somebody to come to
23 the door in a reasonable amount of time.

24 Q And what happened upon -- excuse me. When you
25 approached the door, who was at the door?

1 A I know Detective David Lopez was assigned the
2 breaching part of the entry.

3 Q And what does breaching mean?

4 A Well, two things. He was going to be the door knocker
5 and announcing the presence of ourselves at the
6 residence. If we didn't gain any kind of compliance
7 at the door, he also had the tool, like a ram to
8 actually physically breach the doors.

9 Q And describe for us the basic lay-out of this
10 premises.

11 A It's a two-story duplex, medium sized, not very big,
12 with a front door, which is on the west side of the
13 residence, and then there's a secondary door on the
14 south side of the residence.

15 Q And where was your entry to be made through?

16 A The front door.

17 Q And you said Detective Lopez was the front detective
18 in position to breach. Where were you?

19 A I was positioned -- we're kind of scattered about in
20 front of the door, because everybody's covering
21 different things. I was covering the upper unit with
22 a long gun.

23 Q Okay. How many feet away from Detective Lopez are you
24 approximately?

25 A Probably within eight feet.

1 Q Could you see everything he was doing?

2 A I wasn't watching him. I was watching the upper
3 residence.

4 Q Okay. What happened upon approaching the door? What
5 did you personally see or hear?

6 A I personally observed, the entire time prior to
7 breaching, my focus is on that second-story residence
8 to see if anybody comes to the windows, if anybody
9 starts relocating, anybody comes with a gun to the
10 upper unit.

11 That's my position, because I was assigned
12 to one of the long guns, which is AR-15 rifle. Not
13 everybody in the stack has rifle. Some have pistols,
14 some have fire extinguishers, some have tazers.
15 Everybody's got a different duty during the entry.

16 So obviously I'm covering on the upper,
17 Detective Lopez starts announcing Milwaukee police
18 while knocking on the door, front door.

19 Q Knocking on the front door. Does he knock first, or
20 does he announce first?

21 A Knock and then announce, knock and then announce.

22 Q When you say knock and then announce, what is
23 announced?

24 A Milwaukee police, search warrant.

25 Q And how is that said? Is it said in just a

1 conversational tone, or how is that relayed?

2 A Loud enough where people can hear from both units.

3 Q So relatively loud?

4 A Relatively loud.

5 Q And the knock, is the knock just a slight tapping on

6 the door, or is it -- how loud is it?

7 A It's a forceful (witness demonstrates) forceful knock.

8 THE COURT: I would note for the record

9 that that was a forceful knock.

10 MS. CRIVELLO: Thank you.

11 THE WITNESS: Mr. Lopez is a portly,

12 larger person. He's going to pound a little bit

13 harder than some other people.

14 BY MS. CRIVELLO:

15 Q So Detective Lopez knocks on the door, and then

16 announces Milwaukee Police Department?

17 A Correct.

18 Q Is that wording the standard wording that's utilized

19 by the entry teams?

20 A Correct.

21 Q After Detective Lopez pounded, do you recall

22 approximately how many times he pounded?

23 A I couldn't give you an estimate how many times he

24 knocked, make the same announcement, pause for like a

25 second or two, keep up with the cycle. In the

1 meantime I'm also counting approximate seconds in my
2 head.

3 Q So you said that he knocked, and then he announced,
4 and then what happened?

5 A He paused for a second to see if there would be --
6 anybody would come to the door obviously, then he'd
7 knock -- we'd get nothing. He'd knock, announce
8 again. This cycle went on for 25 seconds
9 approximately.

10 Q How many times did you hear him knock and announce?

11 A Probably say 15 times.

12 Q He knocked and announced 15 different times?

13 A Yes.

14 Q Then what happened?

15 A All of a sudden -- I even heard it. A voice, he later
16 relayed to me that he believed it to be a female
17 voice, but I just heard it as a voice, screamed out,
18 "who is it."

19 Q Could you tell if it was a male or a female voice?

20 A I couldn't personally tell.

21 Q Okay.

22 A But he was closer to the door to listen, even closer.

23 Q And when you say "he," do you mean Detective Lopez?

24 A Detective Lopez.

25 Q When you hear the voice say, "who is it," what is the

1 response?

2 A Detective Lopez, again, announced Milwaukee police,
3 search warrant.

4 Q I'm sorry?

5 A Search warrant.

6 Q And so that would be like the 16th time he's yelled
7 back, Milwaukee Police Department?

8 A Correct, approximately.

9 Q And in response to Detective Lopez yelling Milwaukee
10 Police Department, search warrant, is the door opened?

11 A No.

12 Q What happens next?

13 A Detective Lopez informs me that basically he's got a
14 runner, and to me that's somebody that's fleeing from
15 the front door to relocate within the residence.

16 Q Are you able to determine if this person is running
17 into the lower unit or the upper unit, or where
18 they're running?

19 A No. The front door is a complete steel door with no
20 windows.

21 Q But you do hear -- you hear Detective Lopez advise
22 that it's a runner?

23 A Correct.

24 Q And based on your training and experience, what do you
25 fear a runner is going to do?

1 A Relocate in the residence, possibly arm themselves,
2 destroy evidence, alert other confederates of our
3 presence.

4 Q And based on receiving that information from Detective
5 Lopez, what did you do?

6 A I again command to breach that door.

7 Q And did he in fact do so?

8 A Yes, he did.

9 Q And what does that mean?

10 A He used the ram to actually breach that front door and
11 open it.

12 Q I'm sorry?

13 A And open it.

14 Q Upon making entry where did you proceed?

15 A Directly to the upper unit just past the front
16 entrance way. There's a stairwell to the right that
17 travels upstairs.

18 Q Okay.

19 MS. CRIVELLO: May I approach?

20 THE COURT: Sure.

21 BY MS. CRIVELLO:

22 Q Detective, I'm going to show you Exhibit 1, and I'm
23 going to ask you to look at the top picture that
24 there's a purple X next to. What is that, Exhibit 1?

25 A The front of the residence with the front door.

1 Q A photograph of that?

2 A Photograph.

3 Q Is that how it looked back on the day that you

4 executed the search warrant?

5 A Correct.

6 Q And when you have that -- I'm going to show you what's

7 been marked be as Exhibit 2. I'm going to ask you to

8 look at the top photo with the purple X next to it.

9 Is that in fact that same front door leading from the

10 exterior to the interior, a photograph of that?

11 A That's correct.

12 Q And do you see the shading that appears to be a

13 stairwell going to the upper?

14 A That is it.

15 Q And is that in fact the stairwell that you indicated

16 you entered and went up?

17 A That is correct.

18 Q I'm going to show you Exhibit 3. I'm going to direct

19 your attention to the bottom photograph with the

20 purple X next to it. Can you identify what that is?

21 A Yes. To the left is a hallway that travels eastbound

22 towards the back side of the house, which would lead

23 to a lower unit, as well as the side south door of the

24 residence, and to the right is the stairwell that

25 travels to the second floor of the residence.

1 Q Which is the same stairwell that you proceeded up?
2 A Correct.
3 Q Then I'm going to show you Exhibit 4. Can you
4 identify what that top picture is?
5 A That is a picture half-way up facing upward toward the
6 actual unit upstairs, which breaks off to the left at
7 the top of that landing that you see within the photo.
8 Q And then is the bottom photo the actual door into the
9 upper unit?
10 A Yes, it is.
11 Q I'd move into evidence Exhibits 1 through 4.
12 THE COURT: Any objection?
13 MR. SCHOENFELDT: No.
14 THE COURT: The Court will receive 1
15 through 4.
16 BY MS. CRIVELLO:
17 Q And when you went up this stairwell, are all eight of
18 the entry team proceeding up that stairwell?
19 A That is correct, in single file motion, because of the
20 narrow structure there, with the stairwell and the
21 making the turn up at the top, it's tight.
22 Q And where are you in this continuum?
23 A I am, I believe, number five in the stack. So when
24 Detective Lopez actually travels upstairs and makes a
25 secondary breach upstairs, I'm still kind of around

1 that corner of the stairwell that's coming down.

2 Q Now, when you get to the second landing, do you have

3 to stop and knock and announce 15 times again at the

4 second landing?

5 A No. It was my belief we were compromised already

6 once, and by us -- mind you, as we are travelling up

7 the stairwell, everybody's yelling police, search

8 warrant, police, search warrant. So it's quite

9 evident that the police presence is there, and we're

10 coming upstairs.

11 Q And why are you doing that at this point?

12 A Mainly it's for our safety that people don't think

13 we're robbers or home invaders coming up the stairs.

14 Q Okay. And approximately how many times do you yell

15 again Milwaukee police, search warrant, as you're

16 travelling up this stairwell?

17 A My guess, five, six times myself, and if everybody

18 else is doing it, you can multiply that by

19 approximately eight. So you get a lot of Milwaukee

20 police, search warrant being yelled, and it's even

21 louder because now you're -- the adrenaline is going,

22 you know you already had a runner, so you're making it

23 even louder.

24 Q And upon hitting the top -- upon reaching the upper

25 level, what happens at that point?

1 A Ultimately, Detective Lopez breached that door, and
2 the team proceeded into the residence.

3 Q You indicated earlier in your testimony, and correct
4 me if I'm wrong, what my notes reflect is that from
5 the first knock until the time the door was breached
6 it was approximately 25 seconds; is that accurate?

7 A From the first knock upon arrival?

8 Q Correct.

9 A I counted 25 seconds in my head, which took about 15
10 knock and announces. You got that response, who is
11 it. He again announced the presence. You could hear
12 somebody running. I then gave them an order to breach
13 that door.

14 Now, mind you, it probably takes another
15 three to four, maybe three to five seconds for him to
16 get that ram ready, get in position, get a good
17 footing and then breach that door.

18 So I'd have to say by the time he actually
19 breached the door, we're probably like 35 seconds in
20 from the initial knock.

21 Q And then approximately how much time elapses from the
22 time the front door is breached until you travel to
23 the second landing and breach the second door
24 approximately?

25 A Five to ten seconds. Because we have to get up the

1 stairs. He's got to set up again and breach.

2 Q And when the front door was breached, were you able to
3 lay eyes on who this runner was?

4 A No.

5 Q So at the point you make entry into this common
6 hallway, do you know where this runner has gone?

7 A No.

8 Q Is it possible the runner could have gone into the
9 lower?

10 A He could have went into the lower, he could have went
11 to the basement.

12 Q Is it also possible the runner could have gone into
13 the upper?

14 A Correct, yes.

15 Q But you just did not know at the time the front door
16 was breached?

17 A Correct.

18 Q I have nothing further.

19 THE COURT: All right. Counsel.

20 CROSS-EXAMINATION

21 BY MR. SCHOENFELDT:

22 Q I'll just pick up where you left off. So you have no
23 idea who that runner was?

24 A No.

25 Q And no idea where that person went?

1 A Correct.

2 Q Don't even know if it was a girl or if it was a boy,
3 man or woman?

4 A Never observed the person.

5 Q No idea. So it took you, from the first pounding on
6 the door to the breaching of the door, that was 25
7 seconds, right, approximately?

8 A Excuse me, one more time?

9 Q Was that 25 seconds -- I don't know if I have your
10 testimony correct -- was it from the first time that
11 you knocked on the door to the breaching of the door,
12 that was 25 seconds?

13 A That is not correct. After 25 seconds Detective Lopez
14 got a response from somebody on the other side of the
15 door, asked, who is it. He advised another
16 announcement, Milwaukee police, search warrant.
17 That's when he heard somebody running.

18 So I'm guessing between that time frame
19 and the actual breach with him setting up is
20 approximately 35 seconds.

21 Q And you said that once you breached that door, it
22 takes you about five to ten seconds to get up the
23 stairs?

24 A I'm guessing roughly.

25 Q You guys are running, right?

1 A Yeah, we're moving now.

2 Q Your adrenaline -- you said your adrenaline is
3 flowing?

4 A Correct.

5 Q So you're sprinting up that stairwell, correct?

6 A Safely.

7 Q Yeah. So then when you get up to that door, you don't
8 hesitate at that point except to get the ram rod out,
9 and just blast that door through; is that correct?

10 A We're going to breach that door.

11 Q Yeah. You didn't hesitate one second at that point.
12 You made your mind -- you guys had made up your mind
13 that once you got up that stairwell, you're going in,
14 right?

15 A Yeah. We're committed at that point.

16 Q So basically as soon as you got up there, it was
17 instantaneous that door was breached?

18 A Yes.

19 Q Okay. And when you did breach the door, you found a
20 bunch of people in there, correct?

21 A Two kids on the couch, two kids in another bedroom,
22 and Mr. Carter, Ms. Atkins.

23 Q And they were what, laying on the couch?

24 A The kids?

25 Q I'm sorry. Yeah.

1 A Two kids were on the couch sleeping.

2 Q Okay. They were sleeping. All right. And there was

3 a woman that was what, she -- was she under the covers

4 or was she --

5 A No, no, no.

6 MS. CRIVELLO: I'm going to object to the

7 relevance of this.

8 THE COURT: Overruled.

9 THE WITNESS: She actually opened up the

10 door to the bedroom, the northwest bedroom.

11 BY MR. SCHOENFELDT:

12 Q When did she do that?

13 A When the officers were moving through the house.

14 Q I'm talking about when you first breached the door,

15 the first thing that you saw when you walked in that

16 door, came to that door.

17 A The first thing we observed were two kids sleeping on

18 the couch and a closed door to the northwest bedroom.

19 Q I see. And in that bedroom you found -- bedroom you

20 found Mr. Carter and this woman, is that what you

21 said?

22 A Correct.

23 Q Did you -- strike that. And it's been established

24 that you did not obtain a no-knock search warrant,

25 correct?

1 A That is correct.

2 Q And you recognize the fact that this was a duplex,
3 right?

4 A Correct.

5 Q And you did not bother going -- once you breached the
6 front door, you did not bother breaching the lower
7 level door, correct?

8 A We did not breach the lower level.

9 Q So in other words, you assumed that whatever that
10 woman, whoever that person was, that person came from
11 the second floor, correct?

12 A A person could have come from anywhere within the
13 residence.

14 Q Well, then why, I guess, wouldn't you breach the lower
15 level door?

16 A We didn't see anybody run into the lower.

17 Q You didn't see anybody going into the upper level, did
18 you?

19 A No, but we already breached the lower door, and we
20 were going to go through that upper door.

21 Q You made that determination, that you were going to
22 just go into that second door regardless, correct?

23 A Yes, even if we didn't have a runner, approximately 30
24 seconds in count, we will compromise the door --

25 Q I'm asking for a yes or no answer on that.

1 A What was your question again then?

2 Q I guess you can read that back.

3 (The above question was read back.)

4 THE WITNESS: Yeah, after the first breach
5 to the lower front door.

6 MR. SCHOENFELDT: That's all I have.

7 THE COURT: All right. Ms. Crivello.

8 REDIRECT EXAMINATION

9 BY MS. CRIVELLO:

10 Q Your search warrant, was it for the whole premises?

11 A No.

12 Q Where was it for?

13 A Just the upper unit where Mr. Carter resided.

14 Q And why was it that when you breached the front door,
15 you were going to go into the upper?

16 A Because we had a search warrant for the upper
17 residence.

18 Q I have nothing further.

19 RECROSS-EXAMINATION

20 BY MR. SCHOENFELDT:

21 Q But that search warrant called for a knock search,
22 correct, not a no-knock search?

23 A Correct.

24 Q Nothing further.

25 MS. CRIVELLO: I have nothing further.

1 THE COURT: Thank you for your testimony.
2 You can step down.

3 MS. CRIVELLO: I'm going to rest subject
4 to rebuttal.

5 THE COURT: All right. Mr. Schoenfeldt.

6 MR. SCHOENFELDT: I think everything's
7 pretty well outlined in my brief, Your Honor. You've
8 already gone through the one issue, which was the
9 second issue that I had in my brief.

10 The first issue, it's clear that they did
11 not have a search warrant that was allowed to do it
12 with a no-knock search; they were required to --

13 THE COURT: Let me just ask you, because
14 there was testimony that he knocked. Is your argument
15 that they didn't knock on the upper door, is that what
16 you're saying?

17 MR. SCHOENFELDT: That's what I'm arguing,
18 Your Honor.

19 THE COURT: Okay.

20 MR. SCHOENFELDT: Because we have no idea
21 who this person was, this phantom person that was
22 behind the door. So we have no idea where she came
23 from. She could have come from the lower level. She
24 could have come from outside.

25 Simply hearing somebody running in the

1 hallway is not sufficient to alleviate the necessity
2 of a knock search, it just isn't.

3 THE COURT: All right. The State's
4 position.

5 MS. CRIVELLO: Well, there was a knock and
6 announce. In fact, there were 15 knocks and
7 announces, and those occurred outside the premises.
8 They were done in a fashion loud enough to ensure that
9 everyone contained in the premises would be able to
10 hear, Milwaukee Police Department, search warrant, and
11 that they were in a position throughout the entire
12 premises to hear the pounding loud enough throughout
13 the entire premises.

14 It's interesting to note that defense
15 counsel, in his brief, never cited to a single case
16 that says officers are -- officers are mandated to go
17 to the second level or any secondary door and knock a
18 second time.

19 There is no legislation directly on point
20 as to that. With a no-knock search warrant, upon
21 encountering a duplex with a common hallway, what are
22 officers required to do? They're required to knock
23 and announce, and in this case there's complete
24 compliance.

25 Now, I think the issue turning on whether

1 or not the law should mandate whether or not they have
2 to knock on the upper or lower doesn't even have to be
3 addressed in this particular case.

4 Because in this particular case exigencies
5 arose, and what was the exigency? Well, in response
6 to 15 different knocks and announce, finally a voice
7 yells, who is it, and in response footsteps are heard
8 tearing away.

9 In response to that, ten seconds later the
10 door is breached and officers make entry. Now,
11 Detective Kuspa was asked, what was the concern.
12 Well, the concern is exactly what exigencies are.

13 The concern is that person is either
14 arming themselves against law enforcement, that that
15 person is going and destroying evidence; that that
16 person is alerting the drug trafficker or police
17 presence, and that person will at this point flee the
18 premises or will as well destroy evidence.

19 Based on these observations exigency
20 demanded in this particular case that law enforcement
21 proceed up the stairs in an expedited fashion and make
22 entry into that upper premises in compliance with
23 knock-and-announce rules set forth.

24 So in this case I don't see any deviation
25 from the rule whatsoever, and I respectfully request

1 The Court to deny the defense motion.

2 MR. SCHOENFELDT: Your Honor, that's a
3 great argument if we can assume a lot of things.
4 That's all based on assumptions. First of all, we're
5 assuming that the person up in the upper duplex heard
6 these officers knock on the door.

7 It's a steel door. That was -- that's
8 been stated. It doesn't have a window on it, so it's
9 a very sturdy door. We're going to assume that that
10 person upstairs heard that.

11 So there's an exigency that's based on an
12 assumption that this person that was running ran
13 upstairs. That's an assumption. There's no exigency
14 created except by the officers here. That's the
15 exigency that's created.

16 We don't know who this person was. We
17 don't know where that person went to. If I had
18 something in the affidavit, we had something in the
19 police reports that said, yes, we heard some walking,
20 we heard some running upstairs, fine, that's great.

21 That creates an exigency. It doesn't
22 create an exigency by hearing somebody run away. For
23 all we know that person ran out the back door. That
24 person might have been there as a friend.

25 We don't know. We're making all kinds of

1 assumptions that that person has some connection to
2 that upper level duplex, and we're assuming that they
3 heard, that these people were knocking as hard as they
4 could. We can't assume that.

5 There's no testimony that these people
6 that were up in the upper duplex heard them knocking
7 at a door, for crying out loud. If they were knocking
8 that hard, and if there was that much dishevelment
9 going on upstairs, you wouldn't find two kids sleeping
10 on the couch.

11 You'd find those kids -- we're going to
12 assume now -- if you're going to assume that, we're
13 going to assume another part of this. We're going to
14 assume that those kids are going to be taken into the
15 bedroom, that they're going to be woken up, that
16 they're going to be screaming, they're going to be
17 crying, because all this stuff is going on, but they
18 found them sleeping on the couch, sleeping. It
19 doesn't make sense.

20 So I don't believe that the search is
21 proper. It can't be. What does it take to knock on a
22 door? Say Milwaukee police are here. Knock on the
23 (making sound) -- knock on the door. They don't want
24 to answer within five seconds -- and some of these
25 cases are based -- they allow for three seconds.

1 They bust the door down after three
2 seconds. What does it take to do that? At least they
3 fulfill the requirements of the search warrant. This
4 time they did not fulfill the requirements of the
5 search warrant. So they failed in their search.

6 THE COURT: All right. The Court did hear
7 testimony from Detective Kuspa indicating he's been
8 with MPD for about 25 years, with HIDTA since 2010.
9 He did identify the defendant.

10 He was present at the time the entry team
11 did make its entrance. He testified there were about
12 eight people there, that Detective Lopez announced
13 Milwaukee police while knocking on the door
14 forcefully.

15 He testified that Officer Lopez indicated
16 that there was a runner, that someone had also
17 indicated, who is it. This is a duplex, and so it's a
18 bit different in that there's not just one entrance to
19 the home, it's an entrance on a ground level
20 apparently to two separate residences, one being on
21 the ground level, one being upstairs.

22 The subject of this warrant was the
23 upstairs apartment or level of the duplex. He
24 testified that approximately 35 seconds after the
25 first time the door was knocked on, the door was

1 breached at that point in time. It would be the lower
2 level door on the outside of the home.

3 He testified then about five to ten
4 seconds after that door was breached the second door
5 on the upper level was breached. He testified that
6 the officers were concerned because they didn't know
7 where the runner went.

8 He testified that upon entering, he first
9 observed two children on the couch and that a woman
10 opened up the door to the bedroom, and that was the
11 location he found the woman and the defendant.

12 He testified that when the observation was
13 made, that somebody ran down and somebody ran out.
14 They didn't know exactly where that person went. He
15 testified the search warrant itself was only for the
16 upper unit.

17 All right. Based on that The Court will
18 find as follows: This was a knock-and-search warrant.
19 There was then, therefore, a knock-and-announce
20 requirement.

21 The Court will find that an exigency did
22 arise, in that the officers heard somebody come to the
23 door, asked who is it, and then ran away.

24 The issue relating to the exigency isn't
25 as to the people that are in the house, it's the

1 officers. Do they believe that something has now
2 arisen to a level where they have to make entrance
3 immediately.

4 I would have to agree with the State, in
5 that there are major concerns when you're attempting
6 to enter what you believe is a house that contains
7 drugs and potentially guns, that there is the
8 potential that the people within the household will
9 arm themselves, that evidence will be destroyed.

10 And I would agree with counsel at that
11 point though, we don't know. So the question is, is
12 whether the fact that there's a second door to the
13 upper level, and that's then breached without any
14 knocking or without anything happening.

15 At that point in time The Court will find
16 that because that exigency occurred at that lower
17 level, the officers could then run up the stairs and
18 make entrance to the second door without knocking and
19 announcing.

20 I agree with counsel, we don't have any
21 laws at this point in time that indicate differently,
22 and if the legislature didn't want to pass something,
23 or we would have had case law to indicate a difference
24 in that type of a home versus just a single-family
25 residence, I would certainly have taken notice of

1 that, but I don't have that.

2 I'll find the officers did act
3 appropriately under these circumstances, and therefore
4 The Court will deny the defense motion. Counsel, how
5 would you like the matter calendared?

6 MR. SCHOENFELDT: At this point I guess
7 we're going to schedule it for trial and a final
8 pretrial.

9 THE COURT: All right.

10 MS. CRIVELLO: The State is hereby
11 revoking its offer at this time.

12 MR. SCHOENFELDT: I would ask that the
13 State hold it until the final pretrial, just doing
14 that to move this case along.

15 THE COURT: Any objection?

16 MR. SCHOENFELDT: If that's possible.

17 MS. CRIVELLO: I'm sorry, Judge?

18 THE COURT: Any objection to holding the
19 offer open until the final pretrial date?

20 MS. CRIVELLO: I'll hold it open until
21 five days before the final pretrial.

22 THE COURT: All right.

23 MS. CRIVELLO: That way you could do --

24 MR. SCHOENFELDT: And he's requesting a
25 speedy trial.

1 THE COURT: Sure. The Court will note
2 that the defendant's -- the defendant has requested a
3 speedy trial in this matter.

4 THE CLERK: Next court date, September
5 23rd at 8:30 for final pretrial, and October 10th at
6 8:30 for -- I'm sorry, October 17th at 8:30 for jury
7 trial. The speedy runs on November 7th.

8 MR. SCHOENFELDT: Once again, the 23rd is
9 the final pretrial, right?

10 MS. CRIVELLO: Correct, at 8:30.

11 MR. SCHOENFELDT: Thank you.

12 THE COURT: Thank you, everybody.

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CERTIFICATE

STATE OF WISCONSIN }
 }
COUNTY OF MILWAUKEE }

I, Lisa A. Weninger, hereby certify that I am an
Official Court Reporter for Circuit Court, Milwaukee County,
Wisconsin.

I further certify that I reported the foregoing
proceedings, and that the transcript thereof was prepared by
me via computer-aided transcription.

Dated this 27th day of November 2017.

Electronically signed by Lisa A. Weninger
Lisa A. Weninger, Official Reporter
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